IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 16992 of 2004

Between:

1. The Prl. Chief Conservator of Forests, "Aranya Bhavan", A.P., Hyderabad.

2. The Govt of A.P., rep by its Prl. Secretary to Government, Environment, Forests, Science & Technology Department, Secretariat, Hyderabad.

..... PETITIONERS

AND

Afzal Khan, S/o. Lal Khan, Bayyaram, Kothagudem Division, Khammam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ or direction more particularly one in the nature of Writ of Certiorari calling for the records connected with order dt. 2.4.2004 in O.A.No.6659/2002 on the file of the Hon'ble A.P. Administrative Tribunal, Hyd and quash the same illegal and erroneous.

Counsel for the Petitioners: GP FOR SERVICES-I.

Counsel for the Respondents : MR.P.V.RAMANA.

The Court made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.16992 OF 2004

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

Aggrieved by an order of the A.P. Administrative Tribunal in O.A.No.6659 of 2002, dated 2nd April 2004, the respondent (State) preferred this writ petition.

When the matter is taken up at the interlocutory stage, the learned Government Pleader for Services-I and the learned counsel for the sole respondent, agreed that the writ petition itself could be disposed of.

The respondent was working as Forest Range Officer at Kothagudem from 27-04-1993. A charge sheet, containing 13 distinct charges, dated 07-06-1997, was issued to him. Thereafter, an enquiry was conducted and the Enquiry Officer submitted his report dated 20-10-1998 holding that out of the 13 charges 11 stood proved against the respondent. Aggrieved by the same, the respondent preferred a departmental appeal, which stood rejected. Therefore, the respondent approached the Tribunal by way of the abovementioned O.A. The Tribunal by the order referred earlier, allowed the O.A. The relevant portion of the said order is to the following effect;

> "…… The action taken against the applicant on the basis of the departmental enquiry report is arbitrary and the same is liable to be set aside. In the normal course this matter has to be remitted back to

the disciplinary authority for taking further action in the matter in accordance with law. However, as the applicant has retired from service in 2002 and that the charge related to 1995, it would not be just and proper to remit the matter to the disciplinary authority for taking further action and the matter should end here."

The Tribunal itself recognized that in the normal course, in view of the defective enquiry conducted, the matter was required to be remitted for further action in accordance with law.

Though the fact that the respondent retired from service is a relevant factor in coming to the conclusion whether the matter should be remitted for a fresh enquiry in accordance with law or not, we are of the opinion that it is not the only factor, which determines the fate of the litigation, but the nature of the charges, apart from certain other things, is also relevant.

The charges framed against the respondent are as follows:

1. Commissioner of irregularities in booking of offence case vide POR No. 1/7-95 and 2/7-95 dt.6.8.1995.

2. Indifferent attitude by disrespecting to Enquiry Officer, i.e., Divl. Forest Officer, Flying Squad Party, Khammam at the time of Enquiry.

3. Exercising powers not vested by releasing of (4) carts and bullocks to the accused dealt in POR 1/7-95 and thus failed to follow the compounding and prosecution rules 1969.

4. Misbehavior with subordinates.

5. Misadministration and lack of supervision on raising of plants and other works carried out under TP-1 in VSS.,

Madigapodu resulting in complete failure of plantation, thereby loss to the Government of Rs.16,000/-.

6. Execution of work in VSS., area with outside the labourers violating the principles of J.F.M.

7. Indifferent attitude to the instructions of the Divisional Forest Officer, Kothagudem issued during field inspection on 13.12.1995 amounting to disobedience.

8. False and fabricated booking of expenditure for various operations in the failure of Anisettipalli plantition without actually executing the work thereby cheating the Government.

9. Negligence of duty resulting in failure of teak and Miscellaneous plantation Anisettipalli, 1994 and thereby causing loss to the Government. (Rs.70,376/-)

10. Indecorous correspondence with superior officer amounting to misbehavior.

11. Unauthorised usage of Motor Cycle involved in a lorry case, thereby failed to obtain authorization from the competent authority, i.e., Divisional Forest Officer, Kothagudem.

12. Failure to vacate the Circus tent installed in 1995.

13. Failure to submit week-end dairies in time."

Charge No.8 at-least is a serious charge, wherein the allegation is that the respondent fabricated booking of expenditure for various operations. The statement

of imputation of misconduct annexed in the charge memo discloses that the same is a serious charge of fabrication of the accounts. So also in connection with Charge No.5.

The learned counsel for the sole respondent argued that an enquiry into any charge against the retired officer, regarding the allegations, which pertain to a period of almost a decade prior, would cause prejudice to the defense of the charged officer and therefore, a fresh enquiry, at this stage would not be justified.

The fact remains that the allegations, more particularly, the allegations contained in Charges No.5 and 8, which appear mostly based on record, if proved, would establish a prejudice to the exchequer, in which case, the inconvenience or prejudice that is likely to be suffered by the sole respondent by facing a fresh enquiry at this stage, should be given lesser importance than the interest of the exchequer, in conducting such an enquiry.

In the circumstances, the order of the Tribunal dated 02-04-2004 is modified directing that the matter be remitted to the petitioners for taking appropriate further steps in accordance with law. The petitioners, if they choose to proceed with a fresh enquiry, in view of the fact that the respondent is already retired from service, the same should be completed within a period of six months from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. In the circumstances, there shall be no order as to costs.

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J.Chelameswar, J

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M.Venkateswara Reddy, J

15th July 2005.

mrk.

To

1. The Prl. Chief Conservator of Forests, "Aranya Bhavan", A.P., Hyderabad (with records if any).

2. The Prl. Secretary to Government, Environment, Forests, Science & Technology Department, Govt of A.P., Secretariat, Hyderabad.

3. The Registrar, A.P. Administrative Tribunal, Hyderabad.

4. Two CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).

5. Two CD copies.

*Form-NIC-OGS/WP{**JGK**}*